

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE WILLIAM CLARENCE	:	BANKRUPTCY
LUCABAUGH, JR.	:	No. 97-23893
	:	CHAPTER 13
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WILLIAM CLARENCE	:	ADVERSARY
LUCABAUGH, JR.	:	No. 98-2110
	:	
v.	:	CIVIL ACTION
	:	
CITY OF READING	:	No. 99-4479

ORDER-MEMORANDUM

AND NOW, this 16th day of February, 2000, the appeal of William Clarence Lucabaugh, Jr. of the Bankruptcy Court's order of August 4, 1999 denying his motion for reconsideration of the order of April 13, 1999 dismissing the adversary complaint against appellee City of Reading is denied; and the dismissal is affirmed. 28 U.S.C. § 158.

On appeal, a bankruptcy court's "legal determinations [are reviewed] de novo, its factual determinations for clear error and its exercise of discretion for abuse thereof." In re Trans World Airlines, Inc., 145 F.3d 124, 130-31 (3d Cir. 1998). Here, the adversary complaint was dismissed because 1) plaintiff "fail[ed] to allege that Defendant willfully violated the automatic stay . . . ; and 2) . . . the conduct Plaintiff alleges in his complaint is exempt from the automatic stay under 11 U.S.C. § 362(b)(1) and (4) since it falls within the exemption for the commencement or continuation of criminal proceedings, . . . and the exemption for proceedings by a governmental unit to enforce the governmental unit's police

or regulatory power." Lucabaugh v. City of Reading, Bankr. Adv. No. 98-2110 (Bankr. E.D. Pa. Apr. 13, 1999)(Twardowski, B.J.)(citations omitted).

On September 2, 1997, appellant filed a voluntary bankruptcy petition under Chapter 13 of the Bankruptcy Code. On January 9, 1998, appellee City of Reading initiated a complaint against him before a district justice. It charged him with having violated an ordinance requiring payment of rental housing permit fees allegedly due for the years 1994–1997. Def.’s mem. in support of motion to dismiss, at 2.¹ On March 23, 1998 after notice of the hearing, appellant was found guilty of a summary criminal offense and ordered to pay \$335.50 in fines and costs. Id. Appellant did not appear at the hearing and did not appeal the conviction.² On May 7, 1998, appellant received two arrest warrants for “failure to respond to a citation or pay a fine.” Appellate record, document no. 30. On May 15, 1998, appellant filed an adversary complaint to enforce the automatic stay provision of 11 U.S.C. § 362 against the City of Reading and the district justice. Appellate record, document no. 28.

The question on appeal is whether, in these circumstances, the City of Reading is exempted from the Bankruptcy Code’s automatic stay provision.

Appellee’s Housing Code provides:

¹ Appellee has chosen not to file a response and relies on its Bankruptcy Court brief.

² According to his appellate brief, appellant appeared at the courthouse and informed an unidentified court employee of his bankruptcy status and stated that the debts to the City of Reading “would be settled in bankruptcy court.” Appellant’s brief, at 11.

No owner and/or person let, rent or have available to let or rent or cause to be occupied any dwelling or dwelling unit, and no owner and/or person shall operate a rooming house or let or have available for operation for leasing to another for occupancy any room in a rooming house unless he shall first apply for and obtain a permit issued by the Bureau of Code Enforcement.

City of Reading Codified Ordinance, Article 1713.02 (Rental Occupancy Permit and Inspection Fees). Annual renewal permits are also required. Id. at Article 1713.04. The penalty for failure to comply is “a summary offense” with a sentence of “a fine of not less than one hundred dollars (\$100.00) or more than three hundred dollars (\$300.00) or both.” Id. at Article 1713.99. Municipalities may designate violations of municipal ordinances as summary criminal offenses. Pennsylvania Crimes Code, 18 Pa. Cons. Stat. § 106(c) (1998).

A political subdivision, such as the City of Reading, is exempt from the automatic stay provision when asserting its police or regulatory power. See United States v. Nicolet, Inc., 857 F.2d 202, 207 (3d Cir. 1988); 11 U.S.C. § 362(b)(4). In Nicolet, our Court of Appeals extracted a portion of the legislative history of the Bankruptcy Code in order to articulate the intent of Congress:

[W]here a governmental unit is suing a debtor to prevent or stop violation of a fraud, environmental protection, consumer protection, safety or similar police or regulatory laws, or attempting to fix damages for violation of a law, the action or proceeding is not stayed under the automatic stay.

United States v. Nicolet, Inc., 857 F.2d at 208, quoting S. Rep. No. 95-989, at 52, reprinted in 1978 U.S.C.C.A.N. 5838.

Reading's enforcement of its housing rental permit ordinance plainly comes within the Nicolet-approved exception.³

Edmund V. Ludwig, J.

³ As a corollary, a political subdivision is ordinarily entitled to prosecute a criminal violation without interdiction by the courts. See Younger v. Harris, 401 U.S. 37, 43, 91 S. Ct. 746, 750, 27 L. Ed.2d 639 (1971); Davis v. Sheldon, 691 F.2d 176, 178 (3d Cir. 1982)(denying an injunction against state criminal proceedings based on principles of equity and comity, not bankruptcy stay exceptions). The Bankruptcy Code itself exempts criminal proceedings from the automatic stay provision, 11 U.S.C. § 362(b)(1); it does not “provid[e] a shelter from the consequences of criminal acts.” Collier on Bankruptcy ¶ 362.05 (15th ed. rev. 1997). Whether appellee’s rental housing permit ordinance is primarily criminal or civil in nature has not been argued. The sanctions imposed are solely monetary; however, the Pennsylvania Crimes Code contains a specific crime of municipal housing code avoidance punishable as a misdemeanor for multiple violations. See 18 Pa. Cons. Stat. § 7510 (1998). The present appeal is affirmed on the basis of the governmental regulatory and police power exception, and whether the criminal proceeding exemption applies need not be decided. Also, the issue as to appellee’s willfulness is considered moot.